Supreme Court, U.S.
FILED
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CLERK

No. 00-1021

IN THE

Supreme Court of the United States

RUSH PRUDENTIAL HMO, INC.,

Petitioner,

v.

DEBRA C. MORAN AND STATE OF ILLINOIS,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED DECEMBER 22, 2000
CERTIORARI GRANTED JUNE 29, 2001

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B. Memorandum Opinion and Order of the United States District Court for the Northern District of Illinois (June 9, 1998) 28a

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UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 99-2574

Debra C. Moran,

Plaintiff-Appellant,

v.

Rush Prudential HMO, Inc.,

Defendant-Appellee.

DOCKET ENTRIES

DATE	FILINGS – PROCEEDINGS
6/22/99	Private civil case docketed. [99-2574] [1191139-1] Transcript information sheet due 7/2/99. Appellant's brief due 8/2/99 for Debra C. Moran. Docketing Statement due 6/28/99. (joce)
8/11/99	Filed motion by State of Illinois to intervene because the constitutionality of a state statute has been drawn in question. [1205688-1] [99-2574] (kell)
8/17/99	ORDER issued GRANTING motion to intervene by the State of Illinois because the constitutionality of a state statute has been drawn into question. The clerk of this court is directed to correct the docket to reflect this

	change. Briefing shall proceed in accordance with this court's order dated July 19, 1999. [1205688-1] JKL [99-2574] (land)
10/1/99	Filed 15c appellant's brief by Debra C. Moran. Disk filed. [99-2574] [1220605-1] (patb)
10/1/99	Filed 10c appendix by Appellant Debra C. Moran. [99-2574] [1220606-1] (patb)
10/1/99	Filed 15c appellant's brief by State of Illinois. Disk filed. [99-2574] [1220609-1] (patb)
10/12/99	Filed 15c amicus brief by Amicus Curiae Secretary of Labor. Disk filed. [99-2574] [1223268-1] (patb)
10/15/99	Filed 15c amicus brief by Amicus Curiae AMA, Amicus Curiae IL State Medical, Amicus Curiae American College Leg., per order. Disk filed. [99-2574] [1226286-1] (patb)
2/7/00	Filed 15c appellee's brief by Rush Prudential HMO, per order. Disk filed. [99-2574] [1259637-1] (squi)
2/7/00	Filed 15c amicus brief by Amicus Curiae IL State Chamber, Amicus Curiae Employment Law Council, filed per order. Disk filed. [99-2574] [1259691-1] (patb)
2/7/00	Filed 10c appendix by Amicus Curiae IL State Chamber, Amicus Curiae Employment Law Council. [99-2574] [1259693-1] (patb)

2/22/00	Filed 15c appellant's reply brief by Debra C. Moran. Disk filed. [99-2574] [1263531-1] (kell)
3/23/00	Filed 15c appellant's reply brief by State of Illinois. Disk filed. [99-2574] [1273423-1] (patb)
4/18/00	Case heard and taken under advisement by panel: Circuit Judge Joel M. Flaum, Circuit Judge Kenneth F. Ripple, Circuit Judge Ann C. Williams. [99-2574] [1282027-1] (broo)
4/18/00	Case argued by John P. Schmidt for Appellant State of Illinois, Melinda Sue Kollross for Appellee Rush Prudential HMO, Daniel P. Albers for Appellant Debra C. Moran. [99-2574] [1191139-1] (broo)
6/26/00	Filed Appellant State of Illinois Citation of Additional Authority, per CR 28(e). Dist. [99-2574] [1301953-1] (patb)
6/26/00	Filed Appellee Rush Prudential HMO Citation of Additional Authority, per CR 28(e). Dist. [99-2574] [1302468-1] (patb)
10/19/00	Filed opinion of the court by Judge Ripple. The opinion has been circulated among all judges of this court in regular active service, under Circuit Rule 40(e). A majority of the judges in active service did not wish to rehear the case en banc. Judges Posner, Coffey, Easterbrook and Diane P. Wood voted to grant rehearing en banc. REVERSED. Chief Judge Joel M. Flaum, Circuit Judge Kenneth F. Ripple, Circuit Judge Ann C. Williams.

	Circuit Judge Richard A. Posner, with whom Circuit Judges John L. Coffey, Frank H. Easterbrook, and Diane P. Wood join, dissenting from denial of hearing en banc. [99-2574] [1191139-1] (joce)
10/19/00	ORDER: Final judgment filed per opinion. With costs: y. [99-2574] [1336329-1] (joce)
10/24/00	ORDER: The opinion of this Court issued on 10/19/00 is amended as follows: At slip opinion page 23, footnote 7, add Judge Ilana D. Rovner took no part in the consideration or decision of this matter. [99-2574] [1191139-1] (joce)
11/17/00	MANDATE ISSUED AND ENTIRE RECORD RETURNED. (Contents returned: 3 vol. pleadings; 6 vol. loose pleadings; 1 vol. exhibits) [99-2574] [1191139-1] (cove)
1/2/01	Filed notice from the Supreme Court of the filing of a Petition for Writ of Certiorari. Supreme Court Case No.: 00-1021. [99-2574] [1358598-1] (joce)
7/9/01	Filed order from the Supreme Court GRANTING the Petition for Writ of Certiorari. Supreme Court Case No.: 00-1021. [99-2574] [1414851-1] (joce)

U.S. DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS (CHICAGO)

No. 98-CV-442

Debra C. Moran,

Plaintiff.

v.

Rush Prudential HMO, Inc.,

Defendant.

Filed: 01/26/98
Assigned to: Hon. Suzanne B. Conlon
Referred to: Hon. Ian H. Levin
Demand: $0,000
Nature of Suit: 791
Lead Docket: None
Jurisdiction: Federal Question
Dkt # in Circuit Ct. Cook Co.: is 98 CH 00902
Cause: 29:1132 E.R.I.S.A.-Employee Benefits

DOCKET ENTRIES

DATE	FILINGS – PROCEEDINGS
1/26/98	NOTICE OF REMOVAL by defendant from Circuit Court of Cook County with copy of complaint and motion, case no. 98 CH 902 - Civil cover SHEET - Appearance(s) of Joshua Lee Smith, David Faulkner Schmidt, Joseph J. Hasman as attorney(s) for defendant

(Documents: 1-1 through 1-3) (pw) [Entry date 01/28/98]

4/17/98 MOTION by plaintiff to remand case to the Circuit Court of Cook County; Notice of motion (jmp) [Entry date 04/30/98]

5/11/98 RESPONSE by Rush Prudential HMO to plaintiff's motion to remand case to the Circuit Court of Cook County [9-1]; Notice of filing (jmp) [Entry date 05/12/98]

6/2/98 MEMORANDUM, OPINION, AND ORDER (jmp) [Entry date 06/09/98]

6/2/98 MINUTE ORDER of 6/2/98 by Hon. Suzanne B. Conlon: Plaintiff's motion to remand case to the Circuit Court of Cook County granted [9-1]. This case is remanded to the Circuit Court of Cook County. Enter memorandum opinion and order terminating case. Mailed notice (jmp) [Entry date 06/09/98]

6/2/98 ENTERED JUDGMENT (jmp) [Entry date 06/09/98]

2/12/99 NOTICE OF REMOVAL OF A CIVIL ACTION by Rush Prudential HMO regarding removal complaint [1-1] (Exhibits); Notice of filing (jmp) [Entry date 02/16/99]

2/24/99 ANSWER to plaintiff's first amended complaint by Rush Prudential HMO; Notice of filing (jmp) [Entry date 02/25/99]

3/8/99 SECOND MOTION by Debra C Moran to remand case to Circuit Court of Cook County for lack of subject matter jurisdiction

(Attachment) (Exhibits); Notice of filing (jmp) [Entry date 03/09/99]

3/8/99 MEMORANDUM by Debra C Moran in support of second motion to remand case to Circuit Court of Cook County for lack of subject matter jurisdiction [33-1] (jmp) [Entry date 03/09/99]

3/16/99 RESPONSE by Rush Prudential HMO to motion to remand case to Circuit Court of Cook County for lack of subject matter jurisdiction [33-1] (Exhibits); Notice of filing (jmp) [Entry date 03/17/99]

3/22/99 MEMORANDUM, OPINION, AND ORDER (11) [Entry date 03/24/99]

3/22/99 MINUTE ORDER of 3/22/99 by Hon. Suzanne B. Conlon: Plaintiff's motion to remand and for costs pursuant to 28 U.S.C. 1447(c) is denied. [33-1] Enter Memorandum Opinion and Order. Mailed notice (11) [Entry date 03/24/99]

4/5/99 MOTION by Debra C Moran for leave to file second amended complaint (Exhibits); Notice of motion (jmp) [Entry date 04/09/99] [Edit date 04/09/99]

4/12/99 MINUTE ORDER of 4/12/99 by Hon. Suzanne B. Conlon: Plaintiff's motion for leave to [38-1] file second amended complaint is granted [38-2]. Defendant to file answer to the complaint simultaneously with dispositive motion by 04/23/99. Plaintiff to file response by 05/15/99. Defendant to reply to response

by 05/21/99. Mailed notice (jmp) [Entry date 04/13/99]

4/22/99 MOTION by plaintiff to reconsider based on new authority (Exhibits); Notice of motion. (mk) [Entry date 04/29/99]

4/23/99 ANSWER by defendant Rush Prudential HMO to plaintiff's second amended complaint; Notice of filing. (mk) [Entry date 04/26/99]

4/23/99 MOTION by defendant for summary judgment; Notice of filing. (mk) [Entry date 04/26/99]

4/23/99 MEMORANDUM by Rush Prudential in support of motion for summary judgment [42-1]; Notice of filing. (mk) [Entry date 04/26/99]

5/4/99 RESPONSE by defendant Rush Prudential HMO to plaintiff's motion for reconsideration [46-1]; Notice of filing. (mk) [Entry date 05/05/99]

5/6/99 MINUTE ORDER of 5/6/99 by Hon. Suzanne B. Conlon: Plaintiff Debra Moran's motion for reconsideration based on new authority is denied [46-1]. (See reverse of minute order.) Mailed notice by judge's staff. (mk) [Entry date 05/07/99]

5/24/99 MEMORANDUM by plaintiff in opposition to Rush's motion for summary judgment [42-1]; Notice (hp) [Entry date 05/25/99]

6/3/99 SUPPLEMENT by plaintiff to memorandum in opposition to motion for summary judgment [58-1] (mk) [Entry date 06/10/99]

6/9/99 REPLY by defendant to motion for summary judgment [42-1]; Notice. (mk) [Entry date 06/22/99]

6/14/99 MEMORANDUM, OPINION, AND ORDER (mk) [Entry date 06/15/99] [Edit date 06/15/99]

6/14/99 MINUTE ORDER of 6/14/99 by Hon. Suzanne B. Conlon: Moran's motion to strike Dr. Rosenberg's affidavit and certain exhibits to Rule 12(M) statement [57-1] is denied. The motion for summary judgment [42-1] is granted. Judgment is entered in favor of defendant Rush Prudential HMO, Inc. and against plaintiff Debra C. Moran terminating case. Mailed notices by judge's staff notice (mk) [Entry date 06/15/99]

6/14/99 ENTERED JUDGMENT (mk) [Entry date 06/15/99]

6/21/99 NOTICE OF APPEAL by plaintiff Debra C Moran judgment entered [81-1] from judgment entered [81-1], Scheduling order terminating case [80-1] from Scheduling order terminating case [80-1], motion minute order [80-2] from motion minute order [80-2], order [79-1] from order [79-1], motion minute order [53-1] from motion minute order [53-1], motion minute order [37-1] from motion minute order [37-1], order [36-1] from order [36-1], judgment entered [19-1] from

judgment entered [19-1], Scheduling order This case is remanded to the Circuit Court of Cook County. [18-1] from Scheduling order This case is remanded to the Circuit Court of Cook County. [18-1], Scheduling order terminating case [18-2] from Scheduling order terminating case [18-2], motion minute order [18-3] from motion minute order [18-3], order [17-1] from order [17-1]; Notice of Filing ($105.00 Paid) (ls) [Entry date 06/22/99]

11/20/00 COPY of Order dated 11/16/00 from the 7th Circuit: It is ordered that the motion for stay of mandate is denied. (99-2574) (kf) [Entry date 11/21/00]

11/22/00 CERTIFIED COPY of order from the 7th Circuit: Reversing decision of the District Court [Appeal [85-1]. (99-2574) (ls) [Entry date 11/27/00]

11/22/00 OPINION from the 7th Circuit: Argued 4/18/00; Decided 10/19/00. (99-2574) (ls) [Entry date 11/27/00]

1/18/01 MOTION by plaintiff for entry of judgment, including prejudgment interest and costs (Attachments); Notice (ls) [Entry date 02/02/01]

1/24/01 MINUTE ORDER of 1/24/01 by Hon. Suzanne B. Conlon: Plaintiff's motion for entry of judgment, including prejudgment interest [102-1] and costs is granted [102-2]. Judgment to enter. Mailed notice. (ls) [Entry date 02/02/01]

1/24/01 ENTERED JUDGMENT (ls) [Entry date 02/02/01]

7/2/01 MINUTE ORDER of 7/2/01 by Hon. Ian H. Levin: Defendant's motion to stay ruling on plaintiff's motion for attorneys' fees is granted [113-1]. Plaintiff's amended motion for attorneys' fees [101-1] is stayed pending appeal in the U.S. Supreme Court. Mailed notice. (ls) [Entry date 07/09/01]

IN THE CIRCUIT COURT
OF COOK COUNTY, ILLINOIS,
COUNTY DEPARTMENT,
CHANCERY DIVISION

No. 98 CH 00902

Debra C. Moran,

Plaintiff,

v.

Rush Prudential HMO, Inc.,

Defendant.

Hon. Dorothy Kinnaird

COMPLAINT FOR SPECIFIC PERFORMANCE

NOW COMES the Plaintiff, DEBRA C. MORAN, by and through her attorney, James C. Ten Broeck, and for Complaint against the defendant RUSH PRUDENTIAL HMO, INC., alleges as follows:

1. Defendant is an Illinois corporation doing business and maintaining an office in the County of Cook, State of Illinois.

2. Defendant is a Health Maintenance Organization within the meaning and purview of the "Health Maintenance Organization Act," 215 ILCS 125/1-1 et seq.

3. Defendant issued, for and in consideration of monthly premiums, its Certificate of Group Health Coverage

("Certificate"), a copy which is attached hereto and incorporated herein as Exhibit A.

4. Plaintiff, as spouse of subscriber Paul Moran, was and is at all times pertinent hereto, a Qualified Dependent under the terms of the Certificate and entitled to the benefits thereunder. Attached hereto and incorporated herein as Exhibit B is the Membership Card.

5. Plaintiff has been diagnosed with brachial plexopathy and thoracic outlet syndrome. On October 14, 1997, Dr. Arthur LaMarre, plaintiff's primary care physician, recommended that she be approved to have surgery by Dr. Julia K. Terzis. A copy of said recommendation is attached hereto and incorporated herein as Exhibit C.

6. On October 23, 1997, the coverage for the requested surgery was denied "due to lack of medical necessity per plan certificate for the procedure requested." Copy of denial is attached hereto and incorporated herein as Exhibit D.

7. Plaintiff appealed the denial of coverage, and on November 11, 1997, defendant affirmed its denial of coverage. Copy of affirmance letter is attached hereto and incorporated herein as Exhibit E.

8. Plaintiff appealed the affirmance of denial of coverage to defendant's Membership Advisory Committee. On December 4, 1997, said Committee met and shortly thereafter, issued its written decision again affirming the denial of coverage. Attached hereto and incorporated herein as Exhibit F is said written decision.

9. Plaintiff has thereby exhausted her administrative remedies pursuant to the Certificate.

10. The first week of January, 1998, Ms. Mary Kay Duncan of CCC, Inc. Human Resources Department, the employer of plaintiff's husband, contacted Mr. Dan Engel, an attorney with defendant's legal staff, and requested an independent review of the medical necessity of plaintiff's proposed surgery pursuant to the Health Maintenance

Organization Act, 215 ILCS 125/4-10, a copy of which is attached hereto and incorporated herein as Exhibit G. Mr. Engel responded that he would research the issue and get back to her by January 14, 1998.

11. Despite plaintiff's repeated telephone calls and her written demand of January 14, 1998, a copy of which is attached hereto and incorporated herein as Exhibit H, defendant has failed and refused to comply with said statutory provision.

12. Plaintiff has no adequate remedy at law.

WHEREFORE, Plaintiff prays that the Court order Defendant to agree on the appointment of an independent reviewing physician pursuant to the provisions of said statute, and for such other and further relief as the Court deems meet and proper, and that the Court retain jurisdiction of the matter until the defendant fully complies with said statute, and that plaintiff be awarded her legal costs and fees incurred against defendant.

Signed,

/s/

James C. Ten Broeck
Attorney for Plaintiff
1652 N. Humboldt Blvd.
Chicago, IL 60647
(773) 235-5604

[Filed November 2, 1998]

IN THE CIRCUIT COURT OF COOK COUNTY,
COUNTY DEPARTMENT, CHANCERY DIVISION

NO. 98 CH 00902

DEBRA C. MORAN,

Plaintiff,

v.

RUSH PRUDENTIAL HMO, INC.,

Defendant.

ORDER

THIS CAUSE COMING ON TO be heard on Plaintiff's Motion to Strike the Affidavit of William Pawluk, Plaintiff's Motion for Judgment on the Pleadings, Defendant's Cross-Motion for Judgment on the Pleadings and Defendant's Motion to Strike Plaintiff's Reply Brief Relating to Judgment on the Pleadings; briefs having been filed, arguments heard and the Court being fully advised on the premises:

WHEREFORE, IT IS HEREBY ORDERED that:

1. Plaintiff's Motion to Strike the Affidavit of William Pawluk is granted; the Court will not consider that Affidavit with respect to the Cross-Motions for Judgment on the Pleadings;

2. Defendant's Motion to Strike the Reply Brief of Plaintiff is denied;

3. Defendant's Cross-Motion for Judgment on the Pleadings is denied; and

4. Plaintiff's Motion for Judgment on the Pleadings is granted in part, to the extent that the Court declares the rights of the parties under the Illinois Independent Review Law as set forth herein; specifically, Defendant Rush HMO Prudential HMO is hereby required and ordered under the pertinent statute, 215 ILCS §125/4-10, to provide an independent review of the medical necessity of the surgery Debra Moran had for her conditions of brachial plexopathy and thoracic outlet syndrome; the Court specifically finds that the portion of the independent review statute which requires independent review is not preempted by ERISA; the Court further holds that it is reserving ruling on whether there is or is not preemption of that portion of the statute which requires coverage in the event the independent review determines the covered service to be medically necessary.

5. This case is set for status on December 4, 1998, at 10:00 a.m.

/s/_____
The Honorable Dorothy Kinnaird
Circuit Court Judge

IN THE CIRCUIT COURT
OF COOK COUNTY, ILLINOIS,
COUNTY DEPARTMENT,
CHANCERY DIVISION

No. 98 CH 00902

Debra C. Moran,

Plaintiff,

v.

Rush Prudential HMO, Inc.,

Defendant.

Hon. Dorothy Kinnaird

FIRST AMENDED COMPLAINT

Plaintiff, Debra Moran, by her attorneys, Barnes & Thornburg, for her First Amended Complaint against Defendant Rush Prudential HMO, Inc. states as follows:

1. Defendant is an Illinois corporation doing business and maintaining an office in the County of Cook, State of Illinois.

2. Defendant is a health maintenance organization within the meaning and purview of the "Health Maintenance Organization Act," 215 ILCS §125/1/1 *et seq.*

3. Defendant issued, for and in consideration of monthly premiums, its certificate of group health coverage ("Certificate"), a copy of which is attached hereto and incorporated herein as Exhibit A.

4. Plaintiff, as spouse of subscriber Paul Moran, was and is at all times pertinent hereto, a qualified dependent under the terms of this Certificate and entitled to the benefits thereunder. Attached hereto and incorporated herein as Exhibit B is the Membership Card.

5. The provisions of the Illinois HMO Act, 215 ILCS §125/1-1 *et seq*., including, §125/4-10, are a part of Defendant's Certificate as a matter of law.

6. Defendant also specifically adopted Illinois law as a part of its Certificate by reason of the language of that Certificate at Page 34 of Exhibit A which provides:

> If the provisions of this Certificate do not conform to the requirements of any state or federal law that applies to this Certificate, the Certificate is automatically changed to conform with the requirements of that law.

7. Plaintiff was diagnosed with brachial plexopathy and thoracic outlet syndrome. On October 14, 1997, Dr. Arthur LaMarre, Plaintiff's primary care physician under the Certificate, recommended that she be approved to have surgery by Dr. Julia K. Terzis. A copy of said recommendation is attached hereto and incorporated herein as Exhibit C.

8. On October 23, 1997, the coverage for the requested surgery was denied "due to lack of medical necessity per plan certificate for the procedure requested." A true and correct copy of the denial is attached hereto and incorporated herein as Exhibit D.

9. Plaintiff appealed the denial of coverage and on November 11, 1997, Defendant affirmed its denial of coverage. A true and correct copy of the affirmance letter is attached hereto and incorporated as Exhibit E.

10. Plaintiff appealed the affirmance of denial of coverage to Defendant's Membership Advisory Committee. On December 4, 1997, said Committee met and shortly thereafter, issued its written decision again, affirming the denial of coverage. A true and correct copy of that written decision is attached hereto and incorporated herein as Exhibit F.

11. Plaintiff has exhausted her administrative remedies pursuant to the Certificate.

12. Plaintiff has repeatedly requested Defendant provide an independent review of the medical necessity of Plaintiff's surgery pursuant to the Certificate and the HMO Act, 215 ILCS §125/4-10.

13. Defendant refused to provide a proper utilization review of Plaintiff's surgery by an independent review of the medical necessity of Plaintiff's proposed surgery pursuant to the Certificate and the HMO Act, 215 ILCS §125/4-10, and Defendant has failed and refused to comply with said Certificate and statutory provision.

14. The Illinois HMO Act, 215 ILCS §125/4-10 provides:

> §4-10(a) Medical Necessity - Dispute Resolution - Independent Second Opinion. Each Health Maintenance Organization shall provide a mechanism for the timely review by a physician holding the same class of license as the primary care physician, who is unaffiliated with the Health Maintenance Organization, jointly selected by the patient (or the patient's next of kin or legal representative if the patient is unable to act for himself), primary care physician and the Health Maintenance Organization in the event of a dispute between the primary care physician and the Health Maintenance Organization regarding the medical necessity of a covered service proposed by a primary care physician. In the event that the reviewing physician determines the covered service to be medically necessary, the Health Maintenance Organization shall provide the covered service. Future contractual or

employment action by the Health Maintenance Organization regarding the primary care physician shall not be based on the physician's participation in this procedure.

15. The Illinois HMO Act, 215 ILCS §125/4-10, is an Illinois state statute which regulates insurance.

16. Plaintiff filed a first Complaint in this action on January 23, 1998.

17. Defendant answered that first Complaint on July 10, 1998.

18. Plaintiff moved for judgment on the pleadings on the first Complaint on August 14, 1998.

19. On November 2, 1998, this Court entered a partial judgment on the pleadings for Plaintiff, ruling that the portion of the HMO Act which requires independent review is not preempted by ERISA and ordering Defendant to provide the independent review.

20. The independent review was done by Dr. A. Lee Dellon. Both parties agreed to Dr. Dellon as the Independent Review physician.

21. On December 15, 1998, Dr. Dellon submitted his Independent Review report, a true and correct copy of which is attached as Exhibit G. The Independent Review report concludes that Plaintiff's surgery was medically necessary.

22. Despite Dr. Dellon's Independent Review which found the surgery medically necessary, Defendant still refuses to provide a proper utilization review, refuses to abide by the Certificate and the statute, and refuses to pay for the covered surgery.

23. Despite the recommendation of Plaintiff's primary care physician that Defendant approve Plaintiff's surgery, Defendant still refuses to provide a proper utilization review,

refuses to abide the Certificate and the statute, and refuses to pay for the covered surgery.

24. Despite the recommendation of the Medical Director of CENTRA, the Joint Venture contracting partner of Defendant which provides physician and hospital services for Defendant, that Defendant approve Plaintiff's surgery, Defendant still refuses to provide a proper utilization review, refuses to abide by the Certificate and the statute, and refuses to pay for the covered surgery.

25. Plaintiff is within the class of persons whom the HMO Act, 215 ILCS §125/4-10 was intended to protect.

26. As a direct and proximate result of Defendant's failure and refusal to provide a proper utilization review, its refusal to abide by the Certificate, and its refusal to abide by the statute, Plaintiff was forced to:

(a) obtain the covered surgery and related medical treatment herself;

(b) take loans against the 401(k) retirement plans of her husband;

(c) take personal loans;

(d) personally incur the expense of the requested surgery and follow up care in the total amount of $94,841.27.

27. Plaintiff obtained and paid for the requested surgery and follow-up care herself. Therefore, Plaintiff does not seek a benefit by this action because she has already received the requested medical care.

28. Plaintiff has no adequate remedy at law.

WHEREFORE, Plaintiff Debra Moran prays for a final judgment ordering that Defendant Rush Prudential HMO, Inc.:

(a) specifically perform and abide by the terms of its policy and the Illinois statute 215 ILCS §125/4-10 and pay

for the expenses of the surgery it was supposed to provide but which it refused to provide;

(b) reimburse Debra Moran in the amount of $94,841.27 for the expenses she incurred as the result of Defendant's refusal to provide a proper utilization review, its refusal to abide by the Certificate, and its refusal to abide by the statute;

(c) pay Debra Moran prejudgment interest on the liquidated sum of $94,841.27;

(d) pay all expenses necessary to clear the personal loans and to clear the loans against the 401(k) retirement plans of Debra Moran's husband; and

(e) such other and further relief as the Court deems just in the circumstances.

By: /s/ Daniel P. Albers
One of the Attorneys on
Behalf of Plaintiff
Debra C. Moran

Daniel P. Albers
BARNES & THORNBURG
200 West Madison - Suite 2610
Chicago, IL 60606
(312) 357-1313
Dated: February 4, 1999

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 98 C 442

Debra C. Moran,

Plaintiff,

v.

Rush Prudential HMO, Inc.,

Defendant.

District Judge Conlon
Magistrate Judge Levin

SECOND AMENDED COMPLAINT

Plaintiff, Debra Moran, by her attorney, Daniel P. Albers, for her Second Amended Complaint against Defendant Rush Prudential HMO, Inc. states as follows:

COUNT I - VIOLATION OF ILLINOIS HMO ACT

1. Defendant is an Illinois corporation doing business and maintaining an office in the County of Cook, State of Illinois.

2. Defendant is a health maintenance organization within the meaning and purview of the "Health Maintenance Organization Act," 215 ILCS §125/1/1 *et seq.*

3. Defendant issued, for and in consideration of monthly premiums, its certificate of group health coverage ("Certificate"), a copy of which is attached hereto and incorporated herein as Exhibit A.

4. Plaintiff, as spouse of subscriber Paul Moran, was and is at all times pertinent hereto, a qualified dependent under the terms of this Certificate and entitled to the benefits thereunder. Attached hereto and incorporated herein as Exhibit B is the Membership Card.

5. The provisions of the Illinois HMO Act, 215 ILCS §125/1-1 *et seq.*, including, §125/4-10, are a part of Defendant's Certificate as a matter of law.

6. Defendant also specifically adopted Illinois law as a part of its Certificate by reason of the language of that Certificate at Page 34 of Exhibit A which provides:

> If the provisions of this Certificate do not conform to the requirements of any state or federal law that applies to this Certificate, the Certificate is automatically changed to conform with the requirements of that law.

7. Plaintiff was diagnosed with brachial plexopathy and thoracic outlet syndrome. On October 14, 1997, Dr. Arthur LaMarre, Plaintiff's primary care physician under the Certificate, recommended that she be approved to have surgery by Dr. Julia K. Terzis. A copy of said recommendation is attached hereto and incorporated herein as Exhibit C.

8. On October 23, 1997, the coverage for the requested surgery was denied "due to lack of medical necessity per plan certificate for the procedure requested." A true and correct copy of the denial is attached hereto and incorporated herein as Exhibit D.

9. Plaintiff appealed the denial of coverage and on November 11, 1997, Defendant affirmed its denial of coverage. A true and correct copy of the affirmance letter is attached hereto and incorporated as Exhibit E.

10. Plaintiff appealed the affirmance of denial of coverage to Defendant's Membership Advisory Committee. On December 4, 1997, said Committee met and shortly thereafter, issued its written decision again, affirming the denial of coverage. A true and correct copy of that written decision is attached hereto and incorporated herein as Exhibit F.

11. Plaintiff has exhausted her administrative remedies pursuant to the Certificate.

12. Plaintiff has repeatedly requested Defendant provide an independent review of the medical necessity of Plaintiff's surgery pursuant to the Certificate and the HMO Act, 215 ILCS §125/4-10.

13. In December, 1997 and January, 1998 Defendant refused to provide a proper utilization review of Plaintiff's surgery by an independent review of the medical necessity of Plaintiff's proposed surgery pursuant to the Certificate and the HMO Act, 215 ILCS §125/4-10, and Defendant has failed and refused to provide independent review or analysis, to comply with the Certificate or to comply with the statutory provision.

14. As a result, Debra Moran was forced to obtain the covered surgery and related medical treatment herself, at her own expense, during the period February 19, 1998 through August, 1998. She obtained the requested surgery and follow-up care herself from Dr. Julia K. Terzis and the surgery and follow-up care were successful.

15. The Illinois HMO Act, 215 ILCS §125/4-10 provides:

> §4-10(a) Medical Necessity - Dispute Resolution - Independent Second Opinion. Each Health Maintenance Organization shall provide a mechanism for the timely review by a physician holding the same class of license as the primary care physician, who is unaffiliated with the Health Maintenance Organization, jointly selected by the patient (or the patient's next of kin or legal representative

if the patient is unable to act for himself), primary care physician and the Health Maintenance Organization in the event of a dispute between the primary care physician and the Health Maintenance Organization regarding the medical necessity of a covered service proposed by a primary care physician. In the event that the reviewing physician determines the covered service to be medically necessary, the Health Maintenance Organization shall provide the covered service. Future contractual or employment action by the Health Maintenance Organization regarding the primary care physician shall not be based on the physician's participation in this procedure.

16. The Illinois HMO Act, 215 ILCS §125/4-1, *et seq.* and §4-10 thereof are Illinois state statutes which regulate insurance.

17. The Illinois HMO Act is a state law which regulates insurance and is exempt from ERISA preemption under 29 U.S.C. §1144(b)(2)(A).

18. The Illinois HMO Act has the effect of transferring or spreading a policyholder's risk.

19. None of the three McCarran-Ferguson criteria for a state law which regulates insurance is necessarily determinative in itself. *Union Labor Life Ins. Co.* v. *Pireno*, 458 U.S. 119, 129, 102 S. Ct. 3002 (1982).

20. Plaintiff filed a first Complaint in this action on January 23, 1998 in the Circuit Court of Cook County.

21. Defendant answered that first Complaint on July 10, 1998.

22. Plaintiff moved for judgment on the pleadings on the first Complaint on August 14, 1998.

23. On November 2, 1998, the Circuit Court of Cook County entered a partial judgment on the pleadings for Plaintiff, ruling that the portion of the HMO Act which

requires independent review is not preempted by ERISA and ordering Defendant to provide the independent review. A true and correct copy of the Court's Order is attached as Exhibit H.

24. The independent review was done by Dr. A. Lee Dellon. Both parties agreed to Dr. Dellon as the Independent Review physician.

25. On December 15, 1998, Dr. Dellon submitted his Independent Review report, a true and correct copy of which is attached as Exhibit G. The Independent Review report concludes that Plaintiff's surgery was medically necessary.

26. Despite Dr. Dellon's Independent Review which found the surgery medically necessary, Defendant still refuses to provide a proper utilization review, refuses to abide by the Certificate and the statute, and refuses to pay for the covered surgery.

27. Despite the recommendation of Plaintiff's primary care physician that Defendant approve Plaintiff's surgery, Defendant still refuses to provide a proper utilization review, refuses to abide the Certificate and the statute, and refuses to pay for the covered surgery.

28. Despite the recommendation of the Medical Director of CENTRA, the Joint Venture contracting partner of Defendant which provides physician and hospital services for Defendant, that Defendant approve Plaintiff's surgery, Defendant still refuses to provide a proper utilization review, refuses to abide by the Certificate and the statute, and refuses to pay for the covered surgery.

29. Plaintiff is within the class of persons whom the HMO Act, 215 ILCS §125/4-1 *et seq.* and §4-10, in particular, were intended to protect.

30. As a direct and proximate result of Defendant's failure and refusal to provide a proper utilization review, its refusal to abide by the Certificate, and its refusal to abide by the statute, Plaintiff was forced to:

(a) obtain the covered surgery and related medical treatment herself;

(b) take loans against the 401(k) retirement plans of her husband;

(c) take personal loans;

(d) personally incur the expense of the requested surgery and follow-up care in the total amount of $94,841.27.

31. Plaintiff obtained and paid for the requested surgery and follow-up care herself. Therefore, Plaintiff does not seek a benefit by this action because she has already received the requested medical care.

32. Plaintiff has no adequate remedy at law.

33. Plaintiff's claim for reimbursement does not demand an interpretation of the term "medical necessity" under the Rush HMO plan, it does not require a determination of the medical necessity of the procedures at issue, and it does not require interpretation of a contract governed by federal law.

WHEREFORE, Plaintiff Debra Moran prays for a final judgment:

(a) remanding this cause to the Circuit Court of Cook County, and ordering Defendant Rush Prudential HMO, Inc. to:

(b) specifically perform and abide by the terms of its policy and the Illinois statute 215 ILCS §125/4-10 and pay for the expenses of the surgery it was supposed to provide but which it refused to provide;

(c) reimburse Debra Moran in the amount of $94,841.27 for the expenses she incurred as the result of Defendant's refusal to provide a proper utilization review, its refusal to abide by the Certificate, and its refusal to abide by the statute;

(d) pay Debra Moran prejudgment interest on the liquidated sum of $94,841.27;

(e) pay all expenses necessary to clear the personal loans and to clear the loans against the 401(k) retirement plans of Debra Moran's husband; and

(f) such other and further relief as the Court deems just in the circumstances.

Pursuant to Federal Rule of Civil Procedure 8(e)(2), and because of the Court's memorandum opinion and order of March 22, 1999 denying Debra Moran's Second Motion to Remand, Debra Moran pleads Counts II through III in the alternative to Count I and hypothetically, in the event the Court finds ERISA preempts Debra Moran's claims under Count I. Debra Moran does so with the intent to preserve her claims set forth in her Second Motion to Remand and the claims of her Amended Complaint and Count I of her Second Amended Complaint, that those claims are not preempted by ERISA.

ALTERNATIVE COUNT II -
ERISA - BREACH OF CONTRACT
AND VIOLATION OF ILLINOIS HMO ACT

Pursuant to 29 U.S.C. §1132(a)(1)(b), Plaintiff Debra Moran pleads alternatively as follows:

1. Defendant is an Illinois corporation doing business and maintaining an office in the County of Cook, State of Illinois.

2. Defendant is a health maintenance organization within the meaning and purview of the "Health Maintenance Organization Act," 215 ILCS §125/1/1 *et seq.*

3. Defendant issued, for and in consideration of monthly premiums, its certificate of group health coverage ("Certificate"), a copy of which is attached hereto and incorporated herein as Exhibit A.

4. Plaintiff, as spouse of subscriber Paul Moran, was and is at all times pertinent hereto, a qualified dependent under the terms of this Certificate and entitled to the benefits thereunder. Attached hereto and incorporated herein as Exhibit B is the Membership Card.

5. The provisions of the Illinois HMO Act, 215 ILCS §125/1-1 *et seq.*, including, §125/4-10, are a part of Defendant's Certificate as a matter of law. *Plumb* v. *Fluid Pump Service*, 124 F.3d 849, 859 (7th Cir. 1997).

6. Defendant also specifically adopted Illinois law as part of its Certificate by reason of the language of that Certificate at Page 34 of Exhibit A which provides:

> If the provisions of this Certificate do not conform to the requirements of any state or federal law that applies to this Certificate, the Certificate is automatically changed to conform with the requirements of that law.

7. Plaintiff was diagnosed with brachial plexopathy and thoracic outlet syndrome. On October 14, 1997, Dr. Arthur LaMarre, Plaintiff's primary care physician under the Certificate, recommended that she be approved to have surgery by Dr. Julia K. Terzis. A copy of said recommendation is attached hereto and incorporated herein as Exhibit C.

8. On October 23, 1997, the coverage for the requested surgery was denied "due to lack of medical necessity per plan certificate for the procedure requested." A true and correct copy of the denial is attached hereto and incorporated herein as Exhibit D.

9. Plaintiff appealed the denial of coverage and on November 11, 1997, Defendant affirmed its denial of coverage. A true and correct copy of the affirmance letter is attached hereto and incorporated as Exhibit E.

10. Plaintiff appealed the affirmance of denial of coverage to Defendant's Membership Advisory Committee. On December 4, 1997, said Committee met and shortly

thereafter, issued its written decision again, affirming the denial of coverage. A true and correct copy of that written decision is attached hereto and incorporated herein as Exhibit F.

11. Plaintiff has exhausted her administrative remedies pursuant to the Certificate.

12. Plaintiff has repeatedly requested Defendant provide an independent review of the medical necessity of Plaintiff's surgery pursuant to the Certificate and the HMO Act, 215 ILCS §125/4-10.

13. In December, 1997 and January, 1998 Defendant refused to provide a proper utilization review of Plaintiff's surgery by an independent review of the medical necessity of Plaintiff's proposed surgery, or pursuant to the Certificate and the HMO Act, 215 ILCS §125/4-10, and Defendant has failed and refused to provide independent review or analysis, to comply with the Certificate or to comply with the statutory provision.

14. As a result, Debra Moran was forced to obtain the covered surgery and related medical treatment herself, at her own expense, during the period February 19, 1998 through August, 1998. She obtained the requested surgery and follow-up care herself from Dr. Julia K. Terzis and the surgery and follow-up care were successful.

15. The Illinois HMO Act, 215 ILCS §125/4-10 provides:

> §4-10(a) Medical Necessity - Dispute Resolution - Independent Second Opinion. Each Health Maintenance Organization shall provide a mechanism for the timely review by a physician holding the same class of license as the primary care physician, who is unaffiliated with the Health Maintenance Organization, jointly selected by the patient (or the patient's next of kin or legal representative if the patient is unable to act for himself), primary care physician and the Health Maintenance Organization in the event of a dispute between the primary care physician

and the Health Maintenance Organization regarding the medical necessity of a covered service proposed by a primary care physician. In the event that the reviewing physician determines the covered service to be medically necessary, the Health Maintenance Organization shall provide the covered service. Future contractual or employment action by the Health Maintenance Organization regarding the primary care physician shall not be based on the physician's participation in this procedure.

16. Rush Prudential's Certificate of Coverage, described in Paragraph 3 and attached as Exhibit A, is an ERISA governed employer sponsored welfare benefit plan.

17. Plaintiff filed a first Complaint in this action on January 23, 1998 in the Circuit Court of Cook County.

18. Defendant answered that first complaint on July 10, 1998.

19. Plaintiff moved for judgment on the pleadings in the first Complaint on August 14, 1998.

20. On November 2, 1998, the Circuit Court of Cook County entered a partial judgment on the pleadings for Plaintiff, ruling that the portion of the HMO Act which requires independent review is not preempted by ERISA and ordering Defendant to provide the independent review. A true and correct copy is attached as Exhibit H.

21. The independent review was done by Dr. A. Lee Dellon. Both parties agreed to Dr. Dellon as the independent review physician.

22. On December 15, 1998, Dr. Dellon submitted his independent review report, a true and correct copy of which is attached hereto as Exhibit G. The independent review report concludes that Plaintiff's surgery was medically necessary.

23. Once the non-preempted independent review was provided as required by Illinois law and as ordered by the Circuit Court of Cook County, Defendant Rush had no discretion to overrule the independent reviewer's determination of medical necessity.

24. Defendant Rush breached its obligation to Debra Moran under its ERISA-covered plan by one or more of the following acts or omissions:

(a) By failing and refusing to provide an independent review of the medical necessity of the proposed surgery as set forth in ¶13 above during December, 1997 and January, 1998;

(b) by refusing, despite Dr. Dellon's independent review in which he found the surgery medically necessary, to provide a proper utilization review, to abide by the Certificate and the Illinois HMO Act, and refusing to pay for the covered surgery;

(c) by refusing, despite the recommendation of Plaintiff's primary care physician that Defendant approve Plaintiff's surgery, to provide a proper utilization review, to abide by the Certificate and the Illinois HMO Act, and refusing to pay for the covered surgery;

(d) by refusing, despite the recommendation of the Medical Director of Centra, the joint venture contracting partner of Defendant which provides physician and hospital services for Defendant, to approve Plaintiff's surgery, to provide a proper utilization review, to abide by the Certificate and the Illinois HMO Act, and refusing to pay for the covered surgery.

25. Defendant Rush breached its obligation to pay under the Illinois HMO Act as part of the ERISA-covered plan by reason of one or more of the acts or omissions set forth in Paragraphs 24(a) through (d) above.

26. Defendant Rush breached the requirements of the Illinois HMO Act by reason of one or more of the Acts or omissions set forth in Paragraphs 24(a) through (d) above.

27. As a direct and proximate result of one or more of Defendant's breaches, as set forth in Paragraphs 24(a) through (d) above, Plaintiff was forced to:

(a) obtain the covered surgery and related medical treatment herself;

(b) take loans against the 401(k) retirement plans of her husband;

(c) take personal loans; and

(d) personally incur the expense of the requested surgery and follow-up care in the total amount of $94,841.27.

28. Defendant sought to remove this action from the Circuit Court of Cook County, *inter alia*, on the basis on that ERISA provides a remedy for any claimed violation of the Illinois HMO Act.

WHEREFORE, pursuant to 29 U.S.C. §1132(a)(1)(b) and (g), Debra Moran prays for a final judgment and order that Defendant Rush Prudential HMO, Inc.:

(a) reimburse Debra Moran in the amount of $94,841.27 for the expenses she incurred;

(b) pay Debra Moran prejudgment interest on the liquidated sum of $94,841.27;

(c) pay all expenses necessary to clear the personal loans and to clear the loans against the 401(k) retirement plans of Debra Moran's husband;

(d) pay Debra Moran's attorney's fees and costs incurred in bringing this action pursuant to 29 U.S.C. §1132(g);

(e) finding and declaring Rush Prudential had an obligation to provide an independent assessment of the

medical necessity of Debra Moran's proposed surgery because of the disagreement between the Plan Administrator and the primary care physician about the medical necessity of those proposed services, and finding and declaring that Rush Prudential had an obligation to provide independent review pursuant to the Illinois HMO Act;

(f) finding and declaring that Rush Prudential HMO had an obligation under the Illinois HMO Act to follow the conclusion of the independent reviewer about "medical necessity," and it had no discretion under that statute to contest the independent reviewer's conclusion concerning medical necessity; and

(g) for such other and further relief as the Court deems just in the circumstances.

ALTERNATIVE COUNT III -
ERISA - BREACH OF FIDUCIARY DUTY

Pursuant to 29 U.S.C. §1132(a)(1)(b) and (g), Plaintiff Debra Moran pleads alternatively as follows:

1. Defendant is an Illinois corporation doing business and maintaining an office in the County of Cook, State of Illinois.

2. Defendant is a health maintenance organization within the meaning and purview of the "Health Maintenance Organization Act," 215 ILCS §125/1/1 *et seq.*

3. Defendant issued, for and in consideration of monthly premiums, its certificate of group health coverage ("Certificate"), a copy of which is attached hereto and incorporated herein as Exhibit A.

4. Plaintiff, as spouse of subscriber Paul Moran, was and is at all times pertinent hereto, a qualified dependent under the terms of this Certificate and entitled to the benefits thereunder. Attached hereto and incorporated herein as Exhibit B is the Membership Card.

5. The provisions of the Illinois HMO Act, 215 ILCS §125/1-1 *et seq.*, including, §125/4-10, are a part of Defendant's Certificate as a matter of law. *Plumb* v. *Fluid Pump Service*, 124 F.3d 849, 859 (7th Cir. 1997).

6. Defendant also specifically adopted Illinois law as part of its Certificate by reason of the language of that Certificate at Page 34 of Exhibit A which provides:

> If the provisions of this Certificate do not conform to the requirements of any state or federal law that applies to this Certificate, the Certificate is automatically changed to conform with the requirements of that law.

7. Plaintiff was diagnosed with brachial plexopathy and thoracic outlet syndrome. On October 14, 1997, Dr. Arthur LaMarre, Plaintiff's primary care physician under the Certificate, recommended that she be approved to have surgery by Dr. Julia K. Terzis. A copy of said recommendation is attached hereto and incorporated herein as Exhibit C.

8. On October 23, 1997, the coverage for the requested surgery was denied "due to lack of medical necessity per plan certificate for the procedure requested." A true and correct copy of the denial is attached hereto and incorporated herein as Exhibit D.

9. Plaintiff appealed the denial of coverage and on November 11, 1997, Defendant affirmed its denial of coverage. A true and correct copy of the affirmance letter is attached hereto and incorporated as Exhibit E.

10. Plaintiff appealed the affirmance of denial of coverage to Defendant's Membership Advisory Committee. On December 4, 1997, said Committee met and shortly thereafter, issued its written decision again, affirming the denial of coverage. A true and correct copy of that written decision is attached hereto and incorporated herein as Exhibit F.

11. Plaintiff has exhausted her administrative remedies pursuant to the Certificate.

12. Plaintiff has repeatedly requested Defendant provide an independent review of the medical necessity of Plaintiff's surgery pursuant to the Certificate and the HMO Act, 215 ILCS §125/4-10.

13. In December, 1997 and January, 1998 Defendant refused to provide a proper utilization review of Plaintiff's surgery by an independent review of the medical necessity of Plaintiff's proposed surgery, or pursuant to the Certificate and the HMO Act, 215 ILCS §125/4-10, and Defendant has failed and refused to provide independent review or analysis, to comply with the Certificate or to comply with the statutory provision.

14. As a result, Debra Moran was forced to obtain the covered surgery and related medical treatment herself, at her own expense, during the period February 19, 1998 through August, 1998. She obtained the requested surgery and follow-up care herself from Dr. Julia K. Terzis and the surgery and follow-up care were successful.

15. The Illinois HMO Act, 215 ILCS §125/4-10 provides:

> §4-10(a) Medical Necessity - Dispute Resolution - Independent Second Opinion. Each Health Maintenance Organization shall provide a mechanism for the timely review by a physician holding the same class of license as the primary care physician, who is unaffiliated with the Health Maintenance Organization, jointly selected by the patient (or the patient's next of kin or legal representative if the patient is unable to act for himself), primary care physician and the Health Maintenance Organization in the event of a dispute between the primary care physician and the Health Maintenance Organization regarding the medical necessity of a covered service proposed by a primary care physician. In the event that the reviewing physician determines the covered service to be medically necessary, the Health Maintenance Organization shall

provide the covered service. Future contractual or employment action by the Health Maintenance Organization regarding the primary care physician shall not be based on the physician's participation in this procedure.

16. Rush Prudential's Certificate of Coverage, described in Paragraph 3 and attached as Exhibit A, is an ERISA governed employer sponsored welfare benefit plan.

17. Defendant Rush Prudential HMO had a fiduciary duty to Debra Moran, in its administration of the plan, to obtain an independent analysis of the medical necessity of Debra Moran's proposed surgery, once a dispute arose between the primary care physician and the plan as to such medical necessity. *Highshue* v. *AIG Life Ins. Co.*, 135 F.3d 1141 (7th Cir. 1998).

18. Rush Prudential breached its fiduciary duty to Debra Moran in one or more of the following respects:

(a) by failing and refusing to provide an independent review of the medical necessity of the proposed surgery as set forth in ¶13 above during December, 1997 and January, 1998;

(b) by refusing, despite Dr. Dellon's independent review, Exhibit G, which found the surgery medically necessary, to provide a proper utilization review, to abide by the Certificate and the Illinois HMO Act, and refusing to pay for the covered surgery;

(c) by refusing, despite the recommendation of Plaintiff's primary care physician that Defendant approve Plaintiff's surgery, to provide a proper utilization review, to abide by the Certificate and the Illinois HMO Act, and refusing to pay for the covered surgery;

(d) by refusing, despite the recommendation of the Medical Director of Centra, the joint venture contracting partner of Defendant which provides physician and hospital services for Defendant, to approve Plaintiff's surgery, to

provide a proper utilization review, to abide by the Certificate and the Illinois HMO Act, and refusing to pay for the covered surgery.

19. As a direct and proximate result of one or more of the acts or omissions set forth in Paragraph 18(a) through (d) above, Plaintiff was forced to:

(a) obtain the covered surgery and related medical treatment herself;

(b) take loans against the 401(k) retirement plans of her husband;

(c) take personal loans;

(d) personally incur the expense of the requested surgery and follow-up care in the total amount of $94,841.27.

WHEREFORE, Plaintiff Debra Moran prays, pursuant to 29 U.S.C. §1132(a)(1)(b), for a final judgment and order that Defendant Rush Prudential HMO, Inc.:

(a) reimburse Debra Moran in the amount of $94,841.27 for the expenses she incurred;

(b) pay Debra Moran prejudgment interest on the liquidated sum of $94,841.27;

(c) pay all expenses necessary to clear the personal loans and to clear the loans against the 401(k) retirement plans of Debra Moran's husband;

(d) pay Debra Moran's attorney's fees and costs incurred in bringing this action pursuant to 29 U.S.C. §1132(g);

(e) finding and declaring Rush Prudential had an obligation to provide an independent assessment of the medical necessity of Debra Moran's proposed surgery because of the disagreement between the Plan Administrator and the primary care physician about the medical necessity of those proposed services, and finding and declaring that Rush

Prudential had an obligation to provide independent review pursuant to the Illinois HMO Act;

(f) finding and declaring that Rush Prudential HMO had an obligation under the Illinois HMO Act to follow the conclusion of the independent reviewer about "medical necessity," and it had no discretion under that statute to contest the independent reviewer's conclusion concerning medical necessity; and

(g) for such other and further relief as the Court deems just in the circumstances.

By: /s/ Daniel P. Albers
One of the Attorneys on
Behalf of Plaintiff
Debra C. Moran

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Dated: April 5, 1999